

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

PAUL E. CHARLEY

§

v.

§

CIVIL ACTION NO. 6:12cv494

JASON BROWN

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ORDER DENYING MOTION TO DISMISS

The Plaintiff Paul Charley, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Charley complained of an incident of allegedly excessive force which occurred on April 5, 2012. The Defendant Jason Brown has filed a motion to dismiss arguing that Charley was previously ordered to file an amended complaint setting out all of his claims in one document, but that Charley did not comply with this order; instead, Brown says, Charley's amended complaint simply added a claim for compensatory and punitive damages and did not set out all of his claims in one document. Brown contended that because an amended complaint supersedes the original, this amended complaint became the operative pleading, and the amended complaint does not itself set out a claim upon which relief may be granted. Brown also maintained that Charley was given an order as to the proper way to amend his complaint but did not comply, and thus failed to prosecute his case or to obey an order of the Court.

The Magistrate Judge issued a Report recommending that the motion to dismiss be denied. The Magistrate Judge stated that while Brown was not incorrect, he failed to consider the leniency

in pleadings accorded to *pro se* litigants. Thus, the Magistrate Judge said, while Brown's motion could be well taken if applied to a pleading filed by counsel, such stringent standards should not be applied to a *pro se* plaintiff.

No objections have been filed to this Report; accordingly, the parties are barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).


The Court has reviewed the record in this case and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. [34](#)) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the Defendant's motion to dismiss for failure to state a claim (docket no. 32) is hereby **DENIED**.

It is SO ORDERED.

SIGNED this 24th day of April, 2014.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE